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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

IN RE: UBER TECHNOLOGIES, INC.,  
 PASSENGER SEXUAL ASSAULT  
 LITIGATION

Case No. 3:23-md-03084-CRB

This Document Relates to:  
 ALL ACTIONS

**DEFENDANTS UBER TECHNOLOGIES,  
 INC., RASIER, LLC, AND RASIER-CA,  
 LLC'S STATEMENT IN SUPPORT OF  
 PLAINTIFFS' ADMINISTRATIVE  
 MOTION TO CONSIDER WHETHER  
 ANOTHER PARTY'S MATERIAL  
 SHOULD BE FILED UNDER SEAL**

Judge: Hon. Lisa J. Cisneros  
 Courtroom: G – 15th Floor

**DEFENDANTS' STATEMENT IN SUPPORT OF SEALING****CONFIDENTIAL MATERIALS**

Pursuant to Civil Local 79-5(f)(3) and (c)(1) and the Protective Order entered in this case, dated December 28, 2023, ECF 176 ("Protective Order"), Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively "Uber"), respectfully submit this statement in support of Plaintiffs' Administrative Motion to Consider Whether Another Party's Material Should Be Filed Under Seal, dated July 30, 2024, ECF 762.

**I. BACKGROUND AND REQUESTED SEALING**

On July 30, 2024, Plaintiffs filed an administration motion to consider whether certain materials designated confidential by Uber pursuant to the terms of the Stipulated Protective Order (ECF 176) should be sealed. *See* ECF 761 & 762. These materials include:

Document	Description	Designating Party
Exhibit A to the Parties' Letter Brief	UBER-MDL3084-000001290	Uber
Exhibit B to the Parties' Letter Brief	UBER-MDL3084-000048774	Uber
Exhibit C to the Parties' Letter Brief	UBER-MDL3084-000033294	Uber
Exhibit D to the Parties' Letter Brief	UBER-MDL3084-000032853	Uber
Exhibit E to the Parties' Letter Brief	UBER-MDL3084-000034701	Uber
Exhibit F to the Parties' Letter Brief	UBER-MDL3084-000004053	Uber
Exhibit G to the Parties' Letter Brief	UBER-MDL-3084-000055512	Uber
Exhibit H to the Parties' Letter Brief	UBER-MDL3084-000048716	Uber
Exhibit I to the Parties' Letter Brief	UBER-MDL3084-000018830	Uber

Where a filing party moves to seal because a document has been designated as confidential by another party, the designating party must file a statement and/or declaration within seven days of the motion's filing providing a "specific statement of the applicable legal standard and the reasons for keeping a document under seal." Local Rule 79-5(c)(1); *see also id.* at 79-5(f)(3).

As discussed below, in accordance with the Court's direction, Uber seeks to seal the confidential materials listed above. Each of these documents contain confidential and/or commercially sensitive business information that could harm Uber's competitive standing if they were widely distributed.

## II. APPLICABLE LEGAL STANDARD

When courts consider motions to seal records attached to non-dispositive motions like the Plaintiffs’ motion here (ECF 762), they apply the “good cause” standard of Rule 26(c) of the Federal Rules of Civil Procedure because such records “are often ‘unrelated, or only tangentially related, to the underlying cause of action.’” *Kamakana v. City of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation omitted); *accord Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF, 2020 WL 6387381, at \*1 (N.D. Cal. Feb. 24, 2020). In contrast, filings that are more directly related to a case’s merits “may be sealed only upon a showing of ‘compelling reasons’ for sealing.” *Adtrader, Inc.*, 2020 WL 6387381, at \*1 (quoting *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101–02 (9th Cir. 2016)).

The “lesser” good cause standard applies here because Uber seeks to maintain the sealing of a filing connected to a discovery motion concerning a dispute over the scope of redactions of personal identifying information and relevance that is not more than tangentially related to this case’s merits. *Adtrader, Inc.*, 2020 WL 6387381, at \*1; *see also Brown v. Google LLC*, No. 20-cv-03664-YGR (SVK), 2022 WL 4227545, at \*1 (N.D. Cal. Aug. 9, 2022) (“Here, the ‘good cause’ standard applies because the information the parties seek to seal was submitted to the Court in connection with discovery-related motions, rather than a motion that concerns the merits of the case.”); *cf. United States v. Selugh*, 896 F.3d 1007, 1015 (9th Cir. 2018) (“[M]aterials submitted to a court for its consideration of a discovery motion are actually one step further removed in public concern from the trial process than the discovery materials themselves.” (citation omitted)). Accordingly, “the general history of access and the public policies favoring disclosure” do not apply as strongly. *Kamakana*, 447 F.3d at 1178–79.

“‘Good cause’ is a non-rigorous standard that has been construed broadly across procedural and statutory contexts.” *Ahancian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). The “good cause” sealing standard is the same standard that applies to the entry of a protective order in civil discovery. *See Fed. R. Civ. P. 26(c)(1)* (“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . .”). It

“gives the district court much flexibility in balancing and protecting the interests of private parties.”  
*Kamakana*, 447 F.3d at 1180.

### **III. REASONS FOR KEEPING REQUESTED MATERIAL UNDER SEAL**

Portions of the exhibits to the Parties’ Letter Brief for the PTO 8 dispute regarding Uber’s redactions made in productions pursuant to Pretrial Order No. 5 (ECF 761), should be sealed under the good cause standard. (ECF 762) The exhibits contain private, sensitive, non-public, confidential, proprietary, and commercially sensitive information. Uber has a legitimate interest in sealing in order to avoid harm to its competitive standing. There are no less restrictive alternatives to sealing these documents, which in any event were never at issue on their merits and substance, but rather were used only as exemplars to illustrate the dispute between the parties over the scope of redactions.

#### **A. Uber’s Competitive Standing and Third Party Privacy Interests Will Be Injured if Sealing Is Denied.**

The public disclosure of the exhibits to the Parties’ Letter Brief would cause undue harm if publicly disseminated. *See* Shortnacy Decl. ¶ 4. Exhibits C and D contain confidential, proprietary, and commercially sensitive information about Uber’s business policies, procedures, and systems. *Id.* ¶¶ 7, 8. Exhibits A, E, F contain communications related to individual rider’s private reports to Uber and Uber’s responses. *Id.* ¶¶ 5, 9, 10. Exhibits B, H, and I contain redacted personal identifying information of third party riders and drivers. *Id.* ¶¶ 6, 12, 13. Exhibit G contains a non-public email sent to an Uber employee. *Id.* ¶ 11. Disclosure of these materials would significantly harm Uber’s competitive standing by revealing highly confidential, non-public information about Uber’s proprietary business practices or violate the privacy interests of third parties. Sealing is justified to avoid these harms under these circumstances. *Cf.* Local Rule 79-5(c)(1)(ii). The unredacted portions of all of the above Exhibits contain confidential and/or proprietary information.

#### **B. A Less Restrictive Alternative to Sealing Is Not Sufficient**

No less restrictive alternative to sealing the exhibits to the Parties’ Letter Brief is sufficient. *Cf.* Local Rule 79-5(c)(1)(iii). The material that Uber proposes sealing contains sensitive information

not intended for public dissemination. *See* Shortnacy Decl. ¶ 4. As such, actions short of sealing would be insufficient to protect Uber’s competitive standing and the privacy interests of third parties.

#### IV. CONCLUSION

For the foregoing reasons, Uber respectfully requests that the Court order that the exhibits to the Parties’ Letter Brief (ECF 762) be maintained under seal.

DATED: August 6, 2024

Respectfully submitted,

**SHOOK HARDY & BACON L.L.P.**

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